

# Lease Agreement and Memorandum of Understanding

This Lease Agreement and Memorandum of Understanding (“MOU”) by and between The Metropolitan Government of Nashville and Davidson County through the Metropolitan Board of Public Schools (“Metro” or “MNPS”) and Belmont University (“Belmont”) is intended to outline the agreement of the parties as it relates to Rose Park Middle School and the construction and use of an indoor batting and locker/training facility (the “Improvements”).

1. **Grant of Temporary Construction Right of Access.** MNPS grants to Belmont a temporary construction right of access adjacent to Rose Park Magnet Math and Science Middle School (the “Property”) as depicted in the survey and site plan and as described in the property description, each of which is attached to this Agreement as collective Exhibit A. The purpose of the temporary access shall be for the construction of the Improvements. Metro shall grant for the benefit of Belmont, MNPS, and the community such utility easements and temporary construction easements as reasonably necessary to construct and utilize the Improvements or for any subsequent alterations or additions to the Improvements approved by MNPS.
2. **Design and Construction.** The design and construction of the Improvements shall be fully funded by Belmont and accepted by MNPS. No construction may begin without the written approval of the plans for the Improvements by MNPS. Once such plans are approved, Belmont shall promptly begin and diligently pursue the Improvements to completion. No material changes to the plans shall be made without the written approval of MNPS. In addition, Belmont shall be responsible for securing all necessary licenses, permits, and approvals required to authorize construction of the Improvements. MNPS shall assist in these efforts as appropriate.
3. **Improvements.** The Improvements shall include but may not be limited to an indoor batting and locker/training facility with associated site improvements including a new driveway and parking spaces as depicted on Exhibit A. Belmont warrants that all of the completed Improvements will fully comply with all Metropolitan Nashville Public Schools and Metropolitan Government of Nashville and Davidson County regulations, building and other applicable codes, rules, laws, ordinances and regulations, including, without limitation, the Americans With Disabilities Act.
4. **Use of Facility.** In consideration of the obligations assumed hereunder, Metro, by and through the Metropolitan Board of Education, hereby authorizes Belmont to have, hold, and use those portions of the Property on which Improvements are located for the contemplated use as set forth in this MOU. In connection therewith, Metro hereby further grants Belmont the right to nonexclusive ingress and egress by Belmont (or its contractors) through any portion of the Property for the purpose of taking any action necessary or convenient for construction, maintenance, repair, or alteration of the Improvements or as necessary for the enjoyment of the Improvements. No part of the Property or Improvements shall be used to secure any obligation of Belmont or Metro. In the event any lien of any kind shall be filed or asserted against the Property or Improvements as a result of the actions or inactions of Belmont, Belmont shall promptly cause an appropriate bond to be filed and said lien transferred to the bond. Belmont shall not sublet the Improvements, or any portion thereof, or assign this lease, in whole or in part, without the prior written consent of MNPS.

5. **Activities and Scheduling.** Belmont's uses at the Improvements may include tryouts, training, practices, recruiting, administrative activities, and sports camps associated with its intercollegiate athletic programs in baseball, softball, and golf. MNPS activities shall include tryouts, training, practices, administrative activities and sports camps associated with their interscholastic and Edgehill-based community programs in golf, baseball and softball or other appropriate extended learning programs.

Belmont shall be responsible for scheduling the use of the Improvements by all parties and shall provide a building supervisor to provide scheduled access by MNPS to the Improvements. Any time there is not a previously scheduled Belmont use for the facility or portion of the facility, MNPS shall be allowed access to the unused portions of the facility. MNPS shall provide appropriate coaching supervision to the players participating on MNPS interscholastic teams and community programs in golf, baseball and softball while such players are using the Improvements. Belmont shall construct office space on first floor of the Improvements for the shared use by Belmont's building supervisor, MNPS and their partners. Notwithstanding any other provision of this memorandum, each week for the duration of the term, MNPS shall have reasonable opportunities and access to use the Improvements during daytime and evening hours.

Belmont's use shall be subject to the requirement that Belmont's use is scheduled at least six months in advance. MNPS sponsored uses shall be given equal priority in scheduling. If there is a scheduling conflict that does not involve an intercollegiate event, then MNPS shall be given priority if MNPS is scheduling more than six months in advance. Nothing in this provision shall prevent the parties from working together to adjust schedules as needed less than six months from the date of desired use to maximize the shared use of the Improvements.

Belmont warrants that its uses of the Property and Improvements shall comply in full with all MNPS policies of general applicability, as well as every applicable law, ordinance, statute, rule and regulation. Belmont acknowledges and agrees that there shall be no discrimination against, or segregation of, any person, group of persons, or entity on the basis of race, color, creed, religion, age, sex, marital status, national origin, sexual orientation, gender identity, gender expression, or ancestry in the use or enjoyment of the Property or any portion thereof.

6. **Term and Termination.** Unless sooner terminated pursuant to this MOU, the Term shall expire on the thirtieth (30<sup>th</sup>) anniversary of the Commencement Date. Belmont has the option to extend the Term for two (2) additional ten (10) year periods, on the same terms and conditions set forth herein, subject to approval by MNPS and the Metro Council. Belmont's option to extend the Term shall be exercised by Belmont giving written notice of extension to MNPS at least one hundred eighty (180) days prior to the end of the Initial Term. If Belmont fails to timely exercise Belmont's option to extend the Term as provided herein, this Lease shall terminate at the end of the Initial Term and Belmont's right to thereafter extend the Term will be of no further force or effect. Either party may terminate this Agreement for its convenience prior to expiration upon written notice delivered to the non-terminating party. Termination as contemplated by this paragraph shall take effect on the first anniversary of delivery of the notice ("Termination Date"). If this MOU is terminated by MNPS prior to the thirtieth anniversary of the Commencement Date for any reason other than Belmont's uncured material breach of its obligations under this Agreement or failure to exercise the options to extend the lease, MNPS shall pay Belmont the fair market value of the Improvements. Such value shall be calculated based on two appraisals. MNPS and Belmont shall each select and compensate an appraiser to perform appraisals of the Improvements. If these appraised values are more than 10% apart, a third appraiser shall be jointly hired to conduct the determinative appraisal. If Belmont terminates this MOU for its convenience, no payment shall be owed by MNPS to Belmont.

7. **Removal of Property upon Termination.** Upon termination of Belmont's use under this MOU, Belmont shall be entitled to remove its personal property and shall vacate the Improvements within sixty (60) calendar days. The Improvements shall at all times belong solely to Metro. Unless stated otherwise in this MOU, all personal property and fixtures obtained by Belmont for use on the Property will remain the property of Belmont; provided, however, that fixtures that cannot be removed without material damage to the Improvements shall remain on the Property and become the sole property of Metro, unless Belmont agrees to promptly repair any damage caused by the removal of such fixtures.
8. **Performance and Payment Bond.** Until such time as the Improvements are completed, Belmont shall provide or cause to be provided and maintained in full force and effect a performance bond and a labor and material payment bond in the full amount of the lump sum or guaranteed maximum price payable for the work under any contract issued or executed by Belmont for construction of the Improvements. Such bonds shall be in form and substance and issued by a corporate surety satisfactory to Metro. Each bond shall be in favor of Metro and shall conform in all respects to all requirements imposed by applicable law. Belmont shall pay all premiums for such bonds.
9. **Programming Space.** MNPS and Belmont shall work together to plan the use and programming of the Improvements.
10. **MNPS Extended Learning.** In addition to interscholastic MNPS teams, MNPS Extended Learning programs may utilize the facility at Rose Park. Belmont and MNPS shall work together to schedule times for Extended Learning opportunities and to allow scheduled time for Edgehill community baseball and softball programs.
11. **Annual Lease Payment.** In order to ensure the community has access to the Improvements and that the programming for the community is enhanced, Belmont shall pay MNPS an annual lease payment of \$35,000, with a 3% escalator for inflation annually to support after school programs at the batting facility, Easley Center, Rose Park, Rose Park Middle School, or Carter Lawrence Elementary School. These payments shall be made annually on the anniversary of the Commencement Date. MNPS shall document annually how funds are used including the names of the school or community groups, number of children participating, and hours of operation at the batting facility used by MNPS.
12. **Signage.** Belmont may place signage on the building in a location approved by MNPS. Such signage shall be reasonable in size and MNPS administration shall approve such signage, which approval shall not be unreasonably withheld.
13. **Maintenance and Repair.** Belmont shall keep the Improvements in good condition and repair throughout the term of this MOU. The maintenance and repair of the Improvements shall be the sole responsibility of Belmont. If damage is caused by a third party, its agents, employees, or guests, MNPS shall assist in recovery of funds to pay for the damage caused by such parties.
14. **Utilities and Janitorial.** Belmont shall bear the cost of utilities as well as janitorial services incurred in operating the Improvements. MNPS shall bear the cost of grounds maintenance with the exception of any decorative landscaping which shall be installed and maintained by Belmont.
15. **Insurance.** During the entire Term of this Agreement, Belmont shall provide and keep in force a policy of insurance covering builders risk and property damage at the full replacement value of the Improvements. Metro shall be named as an additional insured on the policy, which shall be issued by a corporation licensed to do business in Tennessee, financially sound and generally recognized, selected by Belmont and with the approval of Metro, not to be unreasonably withheld. Belmont shall maintain, and include Metro as an additional insured, throughout the term of this MOU, insurance of the types and in the amounts described below.
  - a. Worker's Compensation Insurance as required by law and Employer's Liability Insurance with minimum limits of \$1,000,000.

b. General Liability Insurance with minimum limits of \$1,000,000 per occurrence.

16. **Indemnification.** Belmont agrees to be responsible for the conduct of its employees, agents, and students using the Improvements. Belmont agrees that if it uses the Rose Park Magnet Math and Science Middle School building, it will be used in accordance with the rules and regulations of MNPS. Belmont agrees to indemnify and hold harmless MNPS and the Metropolitan Government of Nashville and Davidson County from:
- a. Any claim, damages, costs, and attorney fees for injuries or damages arising, in part or in whole, from Belmont's use of the facility; and
  - b. Any claim, damages, penalties, costs and attorney fees arising from any failure of Belmont, its officers, employees, and/or agents, to observe applicable laws.
- Belmont further acknowledges that MNPS and the Metropolitan Government of Nashville and Davidson County make no warranties about the safety, maintenance, or inspection of the site before, during or after construction of the Improvements.

17. **Good Faith Effort and Annual Report.** The parties hereto agree to work in good faith with each other to do all things necessary as it relates to this agreement.

MNPS and Belmont shall prepare an annual lease monitoring report to provide to the Metropolitan Parks Department (Metro Parks) to be included in the Metro Parks report related to the Rose Park lease agreement between Belmont and the Metro Parks dated November 5, 2007. The monitoring report shall provide information on:

- 1) construction of the facility;
- 2) use of minority and women owned businesses in the initial construction of the facility;
- 3) usage of the facility by MNPS and nonprofit organizations related to MNPS;
- 4) maintenance expenditures by Belmont;
- 5) lease payments and their usage by MNPS;
- 6) utility payments by Belmont;
- 7) and, general compliance with the terms of the lease by both parties, not included in items 1-6.

This report shall be provided annually to Metro Parks in the month of May.

18. **Relationship of Parties.** Nothing in this MOU is intended or shall be interpreted to create a joint venture or partnership between Metro/MNPS and Belmont or make Metro/MNPS the partner of Belmont or constitute either the agent of the other, or make either party in any way responsible for the debts, losses, duties, obligations, responsibilities or liabilities of the other party. Without limiting the generality of the foregoing, Metro and Belmont agree that in respect to use and occupancy of the Property and Improvements by Belmont pursuant to this MOU, Belmont shall be acting as facility user and independent contractor on Metro/MNPS's behalf. All financial obligations related to MNPS are contingent upon the availability of funds appropriated through the Metropolitan School Board's annual budget.

## Legal Description

Beginning at a point along the southern boundary of the property described in Instrument Number DB-00003346-0000579 in the Register's office of Davidson County, Tennessee, said point also lying on the North Right-of-Way of Edgehill Avenue;

Thence, NORTH 13 DEGREES 40 MINUTES 24 SECONDS WEST, 53.65 Feet;

Thence, NORTH 13 DEGREES 2 MINUTES 25 SECONDS EAST, 247.54 Feet to a point along the western boundary of the same property;

Thence, SOUTH 87 DEGREES 16 MINUTES 12 SECONDS EAST, 69.88 Feet;

Thence, SOUTH 12 DEGREES 56 MINUTES 36 SECONDS WEST, 99.77 Feet;

Thence, SOUTH 77 DEGREES 27 MINUTES 40 SECONDS EAST, 65.63 Feet;

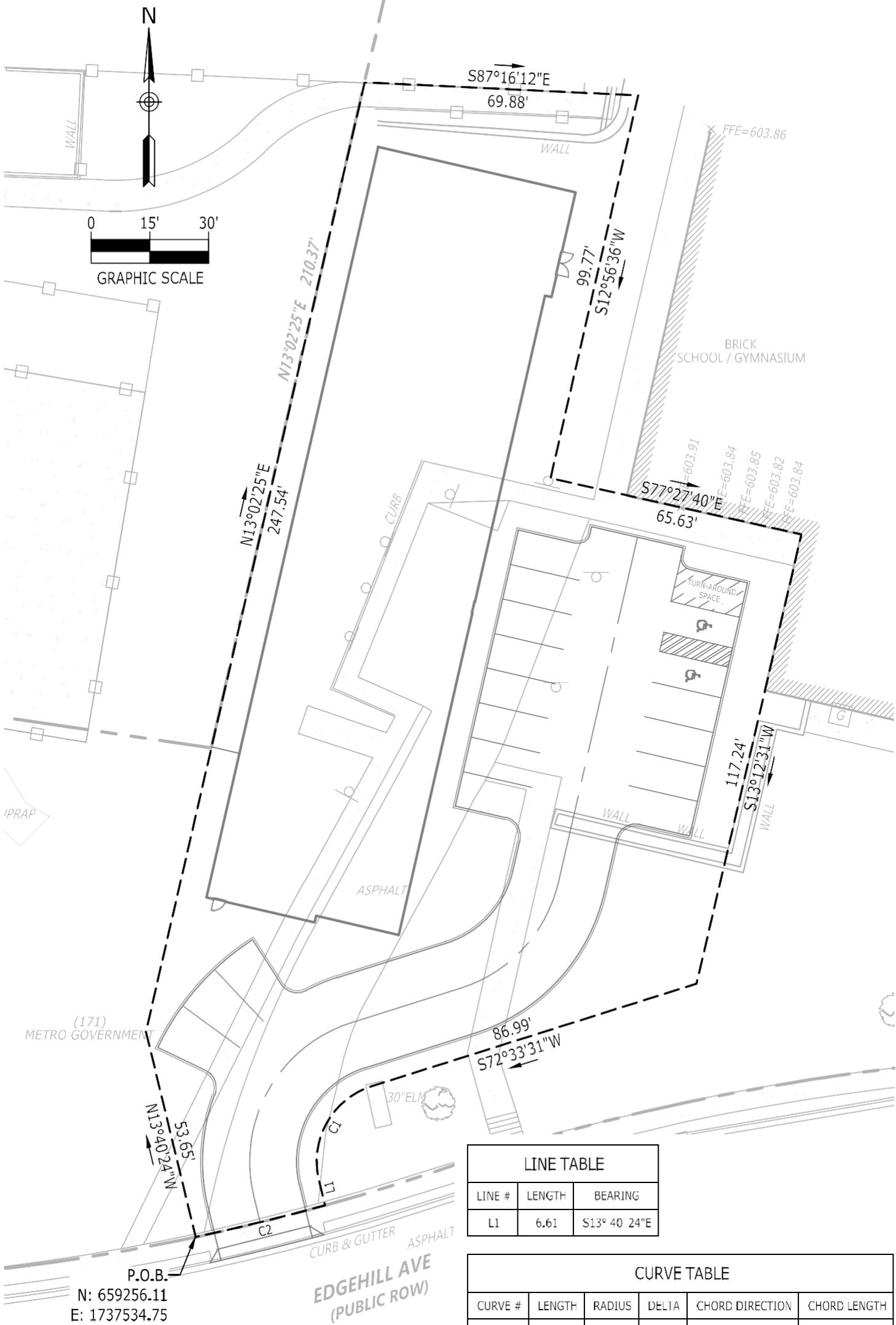
Thence, SOUTH 13 DEGREES 12 MINUTES 31 SECONDS WEST, 117.24 Feet;

Thence, SOUTH 72 DEGREES 33 MINUTES 31 SECONDS WEST, 86.99 Feet;

Thence, with a curve turning to the left with an arc length of 30.10 feet, with a radius of 20.00 feet, with a chord bearing of SOUTH 29 DEGREES 26 MINUTES 34 SECONDS WEST, with a chord length of 27.34 feet;

Thence, SOUTH 13 DEGREES 40 MINUTES 24 SECONDS EAST, 6.61 Feet to a point along the North Right-of-Way of Edgehill Avenue;

Thence, with a curve turning to the right with an arc length of 34.01 feet, with a radius of 542.96 feet, with a chord bearing of SOUTH 76 DEGREES 19 MINUTES 36 SECONDS, with a chord length of 34.00 feet, which is the point of beginning, having an area of 28,094 Square Feet.



LINE TABLE		
LINE #	LENGTH	BEARING
L1	6.61	S13° 40' 24"E

CURVE TABLE					
CURVE #	LENGTH	RADIUS	DELTA	CHORD DIRECTION	CHORD LENGTH
C1	30.10	20.00	86.23	S29° 26' 34"W	27.34
C2	34.01	542.96	3.59	S76° 19' 36"W	34.00



5916 CENTENNIAL BLVD, SUITE 200, NASHVILLE, TN 37209  
(615) 866-2410 | WWW.CATALYST-DG.COM

PROJECT:  
Rose Park Batting Facility  
Nashville, TN

TITLE:  
Easement Exhibit

PROJ # 20180089  
DATE: 12/11/2018

DWG. NO.  
EXH

